

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JAMES MATTHEW TATE,	:	
Plaintiff,	:	
	:	
-vs-	:	Civil No. 3:01cv2329 (PCD)
	:	
OFFICE OF CHIEF MEDICAL	:	
EXAMINER, <i>et al.</i> ,	:	
Defendants.	:	

RULINGS ON DEFENDANTS' MOTIONS TO DISMISS

Defendants move to dismiss plaintiff's complaint pursuant to FED. R. CIV. P. 12(b)(1) and FED. R. CIV. P. 12(b)(6).¹ The motions are **granted**.

I. BACKGROUND

The facts are taken as alleged in the complaint. Plaintiff was arrested and charged with the murder of Carol Chapman. The medical examiner, Malka Shah, did not originally rule Chapman's death to be a homicide. After discussing the matter with members of the Norwalk Police Department, Shah changed the cause of death to homicide to support the police department's conclusion of murder by manual strangulation. Plaintiff stood trial for Chapman's murder, but the jury was unable to reach a verdict and plaintiff was released.

II. DISCUSSION

Defendants move to dismiss the complaint, arguing that plaintiff's claims against the

¹ Plaintiff's original complaint had as defendants OCME and Shah. Plaintiff's amended complaint added defendants Norwalk Police Department, and Detectives Arthur Weisgerber and Nelson Alicea. As the added defendants were not parties at the time the motion to dismiss was filed, the motion to dismiss is limited to the claims against the original defendants.

Office of the Chief Medical Examiner (“OCME”) and Shah, in her official capacity, are barred by the Eleventh Amendment, and plaintiff’s claims against Shah, in her individual capacity, fail to state a claim as to any violation of state or federal rights.

A. Standard of Review

A case may be dismissed for lack of subject matter jurisdiction pursuant to FED. R. CIV. P. 12(b)(1) when a court lacks the statutory or constitutional power to adjudicate. Makarova v. United States, 201 F.3d 110, 113 (2d Cir. 2000). A court may refer to evidence outside the pleadings in resolving a motion to dismiss for lack of subject matter jurisdiction. Id. Plaintiff has the burden of proving by a preponderance of evidence the existence of subject matter jurisdiction. Id. A motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) is properly granted when “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” In re Scholastic Corp. Sec. Litig., 252 F.3d 63, 69 (2d Cir. 2001) (internal quotation marks omitted). A motion to dismiss must be decided on the facts as alleged in the complaint. Merritt v. Shuttle, Inc., 245 F.3d 182, 186 (2d Cir. 2001). All allegations are assumed to be true and are considered in the light most favorable to the non-movant. Manning v. Util. Mut. Ins. Co., 254 F.3d 387, 390 n.1 (2d Cir. 2001).

When considering motions to dismiss a pro se complaint, courts must construe the complaint broadly and interpret it to raise the strongest arguments suggested. Weixel v. Bd. of Educ. of N.Y., 287 F.3d 138, 145-46 (2d Cir. 2002). As a pro se party, plaintiff is entitled to some deference in meeting pleading requirements. See Haines v. Kerner, 404 U.S. 519, 520

(1972). The Supreme Court has instructed district courts to construe pro se complaints liberally and to apply a more flexible standard in determining the sufficiency of a pro se complaint than they would in reviewing a pleading submitted by counsel. Id. A pro se complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that no set of facts could be proven that would establish an entitlement to relief. Weixel, 287 F.3d at 145-46.

B. Eleventh Amendment Immunity

Defendants argue that the claims against OCME and defendant Shah in her official capacity are barred by the Eleventh Amendment.

1. Defendant OCME

A suit against the state of Connecticut or one of its agencies is barred by the Eleventh Amendment, unless Connecticut has consented to be sued or Congress has expressly abrogated Connecticut's sovereign immunity. Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 99-100 (1984); Quern v. Jordan, 440 U.S. 332, 340 (1979); Seminole Tribe of Fla. v. Fla., 517 U.S. 44, 45 (1996). OCME is a state agency created pursuant to Conn. Gen. Stat. § 19a-403. There is nothing to indicate that Connecticut has consented to be sued under § 1983 or that Congress has abrogated Connecticut's sovereign immunity for purposes of such a claim, and plaintiff does not provide legal authority to the contrary. Accordingly, defendant's motion to dismiss claims against defendant OCME under § 1983 is granted.

2. Defendant Shah, in her official capacity

Plaintiff seeks only money damages from defendant Shah. In a suit seeking money

damages against a state official in her official capacity, the state is deemed to be the real party at interest because an award of damages would be paid from the state treasury. Hess v. Port Auth. Trans-Hudson Corp., 513 U.S. 30, 48-49 (1994). Thus, a state official acting in her official capacity may not be held liable for damages unless the State itself may be held liable. Ky. v. Graham, 473 U.S. 159, 166 (1985). As the claim against the State for damages is barred by the Eleventh Amendment, the same is true of the plaintiff's claim against Shah acting in her official capacity.

C. Section 1983 Claim Against Defendant Shah in Her Individual Capacity

Plaintiff argues that Shah's actions in changing the cause of Chapman's death to homicide in an effort to support a conclusion of murder by manual strangulation violated his First and Sixth Amendment rights. Defendant argues that plaintiff cannot allege a violation of any constitutional right.

Plaintiff's claims against Shah in her individual capacity, read under the liberal standard applicable to *pro se* pleadings, do not implicate a violation of the First or Sixth Amendments. Nor can it be said that the allegations otherwise implicate an entitlement to relief for her actions. See Weixel, 287 F.3d at 145-46. The claims against defendant Shah are therefore dismissed.

III. CONCLUSION

Defendants' motions to dismiss, (Doc. Nos. 11 and 14), are **granted**.

SO ORDERED

Dated at New Haven, Connecticut, December ___,2002.

Peter C. Dorsey
Senior United States District Judge